

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

RICHARD L. & MARY ANN)	
POTTER,)	DOCKET NO.: PT-1997-61
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 2nd day of March, 1997, in the City of Shelby, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer, Richard Potter, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Kevin Watterud, commercial appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only described as Lots 1,2,3
plus a closed alley, Shelby Second Addn,
Shelby, Toole County, MT.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$8,438 for the land and \$41,700 for the improvements.

4. The taxpayer appealed to the Toole County Tax Appeal Board, requesting a reduction in value to \$8,067 for the land and \$0 for the improvements.

5. The DOR adjusted the land value to \$8,067, and the County Board denied the appeal on the improvements.

6. The taxpayer then appealed that decision to this Board.

TAXPAYER'S CONTENTIONS

Mr. Potter argued that the subject building was incomplete and, as such, should have no value for tax purposes

until it is completed. The subject building was erected with basic materials he purchased in 1992 for \$6,200 from a steel building representative. He obtained a building permit for the building in 1994 but has worked on the project only as time and money have allowed. He did not actually begin construction until 1995.

The Potters are proceeding with the construction of this structure as a hobby project since the retirement of Mr. Potter for health reasons. They have not set a completion date. Mr. Potter estimated that the building was 40% complete and, when finished, he will have approximately \$55,000 in costs. He included nothing for his labor in his estimate of costs; however he did for the work that was performed by others. The building is being built as a warehouse and, at this time, has no heat, electricity, or floor. In addition to the steel components, there is masonry construction of some walls.

Mr. Potter had contended before the local board that the building should be granted tax benefits as new or expanding industry but dropped that contention before this Board.

DOR CONTENTIONS

The DOR has appraised the building as an average

grade building, "structure type" 398 (warehouse), "use type" 053 (office building), with construction started in 1995. The building is valued at 50% complete, and an economic condition factor of 94% has been applied.

BOARD'S DISCUSSION

There is very little disagreement between the taxpayer and the DOR over the facts as presented in this appeal. There is however a basic difference in the calculations of value: the taxpayer attributes value based on his actual cash costs to date and projected forward to completion; and the DOR which is attempting to determine a market value based on the completed structure then factored back for the percentage complete. This Board has long upheld the premise that the improvement cost in terms of materials and supplies is but one measure of market value. The actual market value may be higher or lower than what has been expended in terms of cash, and the exclusion of a component for labor is invalid.

The DOR has attempted the use of a residential Percent Complete Table to determine the status of this commercial building. This is an awkward attempt, since many of the components of the table are not found in the subject

building, a warehouse, and may never be found in this building even when 100% complete. The taxpayer estimated the building was 40% complete; the DOR has determined it to be 50% complete. Based on the evidence and testimony, it is the opinion of the Board that the DOR has determined a reasonable percentage and has fairly applied the result.

The categorization of the structure type as a warehouse is in concert with the testimony of the taxpayer as shown on page 34-5 of the 1997 Montana Appraisal Manual, warehouse, structure type code 398. The coding of the use type "053" office building is not consistent with the testimony of either party. The designation of the structures use as an office building in turn exaggerates the value of the interior finish, i.e. electrical, heating, flooring, etc. Computer pricing would result in a higher price per square foot. It is the opinion of this Board that the subject building should be revalued by the structure type designation 398 (warehouse) and the use type designation 045 (warehouse) utilizing the 1997 Montana Appraisal Manual.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over this matter in accordance with 15-2-301, MCA.

2. 15-8-111, MCA, requires that all taxable property must be assessed at 100% of its market value and further that; 15-8-111(b) states "If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence."

It is the opinion of this Board that the appeal be granted in part and denied in part and the decision of the Toole County Tax Appeal Board be reversed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Toole County by the assessor of that county at the 1997 tax year value of \$8,067 for the land

and the value for the improvements as determined by the DOR consistent with the changes contained in this order.

Dated this 10th of March, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.